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ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT  
DISTRICT OF WYOMING

-----X  
BRIDGET SMITH,

Plaintiff,

10 Civ. 156-D

-against-

AFFIDAVIT OF  
MARC WIETZKE

RAIL LINK, INC. and GENESEE & WYOMING, INC.

Defendant.

-----X

MARC T. WIETZKE, being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in the State of New York and I am a member of the Law Offices of Michael Flynn PC, 1205 Franklin Avenue, Garden City, NY 11530, attorneys for the plaintiff, Bridget Smith.

2. This Affidavit is respectfully submitted in opposition to defendants' motion for summary judgment pursuant to FRCP 56.

EXHIBITS

3. Attached hereto as Exhibit 1 is the transcript of the deposition of James Benz, Chief Operating Officer of defendant Genesee & Wyoming, Inc. (“GWI”).

4. Attached hereto as Exhibit 2 is the transcript of the deposition of Andrew Chunko, a Senior Vice President of GWI and Manager in charge of GWI’s Rocky Mountain Region, which includes the Powder River Basin areas where plaintiff worked for defendant Rail Link, Inc. (“RLI”).

5. Attached hereto as Exhibit 3 is a determination by the Railroad Retirement Board that Railroad Services, Inc., now known as Genesee and Wyoming Railroad Services, Inc. (“GWRSI”), is a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

6. Attached hereto as Exhibit 4 is a determination of the Surface Transportation Board, a division of the Department of Transportation, regarding GWI’s purchase and control of the Corpus Christi Terminal Railroad, Inc.

7. Attached hereto as Exhibit 5 is a February 2006 news article regarding RLI’s activities in Texas.

8. Attached hereto as Exhibit 6 are excerpts of the worker’s compensation policy covering defendants.

9. Attached hereto as Exhibit 7 is correspondence between RLI and the Railroad Retirement Board.

10. Attached hereto as Exhibit 8 is a printout from a section of defendants’ company website.

11. Attached hereto as Exhibit 9 is a printout of the home page of defendants’ website.

12. Attached hereto as Exhibit 10 is a printout from a section of defendants' company website.

13. Attached hereto as Exhibit 11 is a printout from a section of defendants' company website.

14. Attached hereto as Exhibit 12 is the public tariff sheet for Talleyrand Terminal Railroad

15. Attached hereto as Exhibit 13 is the public demurrage sheet for Talleyrand Terminal Railroad

16. Attached hereto as Exhibit 14 is the public tariff sheet for Commonwealth Railway

17. Attached hereto as Exhibit 15 is a 2005 Press Release issued by GWI

18. Attached hereto as Exhibit 16 is a state filing for First Coast Railroad.

19. Attached hereto as Exhibit 17 is a state filing for Talleyrand Terminal Railroad.

20. Attached hereto as Exhibit 18 is the public tariff sheet for York Railway Company

21. Attached hereto as Exhibit 19 are comments submitted by GWI to the National Mediation Board.

22. Attached hereto as Exhibit 20 is an excerpt of the GWI Safety Rules

23. Attached hereto as Exhibit 21 is an excerpt of the employee handbook issued by defendants.

24. Attached hereto as Exhibit 22 is a memo distributed to plaintiff by defendant.

25. Attached hereto as Exhibit 23 is an excerpt of the employee benefit manual.

26. Attached hereto as Exhibit 24 is correspondence from GWI re insurance.

27. Attached hereto as Exhibit 25 are forms from GWI regarding plaintiff termination.

28. Attached hereto as Exhibit 26 is an agreement between RLI and RailCrew Express.

29. Attached hereto as Exhibit 27 are direct deposit forms requested by GWI upon plaintiff's hiring.

30. Attached hereto as Exhibit 28 is correspondence from GWI to plaintiff terminating her life insurance coverage.

31. Attached hereto as Exhibit 29 are transportation rule excerpts.

32. Attached hereto as Exhibit 30 are office and administrative safety rules.

33. Attached hereto as Exhibit 31 is information distributed to plaintiff re the employee stock purchase plan.

34. Attached hereto as Exhibit 32 is a certified printout from plaintiff's bank account showing deposits from both defendants.

35. Attached hereto as Exhibit 33 are documents regarding insurance identifying the employer as GWI

36. Attached hereto as Exhibit 34 is the 2006 10k filing with the SEC.

37. Attached hereto as Exhibit 35 is the 2009 10k filing with the SEC.

DATED: NASSAU, NEW YORK  
January 18, 2011

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By: 

MARC WIETZKE